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## LIENS AND ADJUSTMENTS OR RECOVERIES

1. *The State uses the following process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home:*

The State requests verification from the attending physician of the institutionalized individual's status immediately preceding giving notice of the State's intent to file a real property lien.

2. *The following criteria are used for establishing that a permanently institutionalized individual's son or daughter provided care as specified under regulations at 42 CFR 433.36(f):*

The State uses the following guidelines (this list is not inclusive):

- \*written proof verifying the date the son or daughter moved into the home;
- \*number of hours per day which the son or daughter provided on-site care, and personal care.
- \*any part-time or full-time jobs held while providing care;
- \*any schools or other similar institutions the son or daughter attended while providing care;
- \*specifics regarding the kind of care the son or daughter provided, i.e., nursing care, daily living care, homemaker services, transportation, financial, etc.;
- \*any service agency, governmental or private, which provided care, the dates provided and the extent of care provided;
- \*letter from the attending physician of the institutionalized individual, stating what kind of care, and duration of care, that was needed to prevent medical institutionalization.

3. *The State defines the terms below as follows:*

- \* *estate* - Estate is defined as used in Minnesota Statutes, Chapter 524, Uniform Probate Code.
- \* *individual's home* - An individual's home, for the purposes of the Medical assistance lien, is real property in which the recipient has an ownership interest, and which the recipient occupied as a primary dwelling immediately prior to admission to a medical institution.
- \* *equity interest in the home* - Equity interest in the home means an ownership interest recognized under Minnesota law.
- \* *residing in the home for a least one or two years on a continuous basis* - Residing in the home on a continuous basis means the person occupies the home as his or her primary dwelling, and intends to continue to occupy such home for the indefinite future.

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*\*lawfully residing* - Lawfully residing means residing in a manner not contrary to, or forbidden by law.

*\*discharge from the medical institution and return home* - Discharge from a medical institution is actual discharge to the recipient's home, which is not a medical institution. Discharge does not include medical leave days or therapeutic leave days, or visitation to home per plan of treatment.

4. *The State defines undue hardship as follows:*

The State does not define undue hardship in finite terms, but guides the determination process. These circumstances are not exclusive, as there may be other situations that cause undue hardship.

An undue hardship may exist when the circumstances described in one or more of the following paragraphs are present:

A. The estate claim could not be paid except by the sale of assets (real or personal property), subject to probate proceedings, for which the following statements are true for a period of at least 180 days prior to the date the decedent died and continue as true -

- \*the assets are used by the waiver applicant to produce income in his or her trade, profession, or occupation (trade, profession or occupation include a working farm that the waiver applicant actually operates, but does not include a farm that is not worked by the applicant, or a farm that is rented); and

- \*the assets are a necessary part of the waiver applicant's trade, profession or occupation; and

- \*the trade, profession, or occupation in which the assets are used is the waiver applicant's sole source of income, and

- \*the waiver applicant has worked continuously and exclusively in the trade, profession, or occupation in which the assets are used.

B. The estate claim could not be paid except by the sale of the decedent's real estate subject to probate proceedings, and the following are true -

- \*the waiver applicant actually and continuously occupies the real estate as his or her only dwelling place for at least 180 days prior to the date the decedent died and continues to occupy the dwelling; and

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\*the real estate for which the hardship waiver is requested was classified as homestead property for property tax purposes under Minnesota Statutes, section 273.124, throughout the entire period of time referred to in the prior paragraph.

C. Notwithstanding anything else to the contrary, if the decedent took any of the following actions, and the waiver applicant's circumstances are wholly or partially a result or a consequence of those actions, there is not hardship -

\*actions which divested or diverted assets in order to avoid recovery of medical assistance paid for the decedent or the decedent's spouse, from the decedent's estate; or

\*actions with divested or diverted assets with the result or effect that medical assistance paid for the decedent or the decedent's spouse are wholly or partially unrecoverable from the decedent's estate.

5. *The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship, and when recovery is not cost-effective:*

A. The State will not waive an estate claim, even if circumstances are present that would grant a waiver for undue hardship, if the decedent's heirs or survivors would not receive a benefit from the waiver because of other filed claims against the estate.

B. The State will withdraw any estate claim, either fully or partially, after a determination of hardship has been made to all or part of the estates assets. In the event that an estate claim has not been filed, the State will not file an estate claim in cases where a determination of hardship has been made on all or part of the estate assets.

C. An estate claim need not be filed in probate when it would not be cost effective to make a recovery from the deceased medical assistance recipient's, or recipient's spouse's estate. The decision to not file an estate claim can be made without an application being made for a waiver based on undue hardship.

6. *The State defines cost-effective as follows (include methodology thresholds used to determine cost-effectiveness):*

Cost effective for estate claim purposes means that the estimated costs for filing, pursuing, and collecting the estate claim are equal to, or greater than, the total amount of the claim that the State is legally entitled to file, or the total amount the State is legally entitled to collect

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after filing an estate claim.

7. *The State uses the following collection procedures (including specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):*

The State follows these steps:

- A. Reasonable effort to identify as many heirs and devisees as possible.
- B. Notice sent to each of the identified heirs and devisees a Notice of Claim and an Application for a Waiver of Claim. This form contains:
  - 1. a statement of the claim
  - 2. notice of the right to apply for a hardship waiver
  - 3. a statement of what constitutes undue hardship
  - 4. procedures and instructions for filing an application for an undue hardship, and the time period - 30 day period to file an application from receipt of notice
  - 5. information regarding appeal rights and procedures
- C. Review and determination on each application for waiver
  - 1. 30 day time period to make a determination on the application for a waiver
  - 2. written response of the determination
  - 3. information regarding appeal rights and procedures